

IN THE HIGH COURT OF BOMBAY AT GOA***WIT PETITION NO.151 OF 2019***

1. Shri Ramendra D. Mayenkar
2. Shri Lav K. Naik,
3. Shri Shankar D. Thakur
4. Shri Haheshwar Sawant
5. Shri Mahesh G. Naik
6. Shri Sanjiv D. Naik
7. Shri Vithal S.A. Dessai
8. Shri Mohan V. Naik
9. Shri Umesh G. Naik
10. Shri Subhash V. Satarkar
11. Shri Gokuldas V. Naik
15. Shri Rajendra H. Hoble
16. Shri Anand M. Naik
17. Shri Dilip R. Jalmi
18. Shri Suresh P. Naik
19. Shri Premanand S. Gaonkar
20. Shri Remet J. Vaz
21. Shri Gokuldas Gaude
22. Shri Hanumant M. Naik
23. Shri Damodar P. Naik
24. Shri Bhagwant P. Naik
25. Shri Ulhas D. Naik
26. Shri Madhav P. Dessai
27. Shri Francis Godinho
28. Shri Anand B. Gaude
29. Shri Uday V. Naik
30. Shri Ratnakar K. Gaude
31. Shri Suryakant Naik
32. Shri Ulhas S. Naik
33. Shri Ankush A. Gaonkar

34. Shri Devanand Naik
35. Shri Vithal Dessai
36. Shri Damodar M. Naik
37. Shri Mahadev P. Dessai
38. Shri Gaspar M.J. Rodrigues
Through their Representative Union
Gomantak Mazdoor Sangh
represented by its General Secretary
Puti Gaonkar, G-5,
Macedo Apartments, Tisk,
Ponda-Goa.

... Petitioner.

Versus

1. State of Goa, through its Secretary,
Secretariat, Porvorim, Goa.
2. Office of the Collector,
Collectorate North Goa.
3. Office of the Mamlatdar,
Ponda Taluka, Ponda Goa.
4. Menezes Chemicals (Goa) Ltd.,
through its Director, office: 2nd,
CMM Building, Rua-De-Ourem,
Panaji Goa.
5. AXIS Bank, through its
authorized officer,
Office at: Sidarth Bhandodkar Bhavan,
Dr. P. Shivvgaonkar Road,
Near Mahalakshmi Temple,
Altinho, Panaji, Goa 403001.

6. Union Bank of India,
Panaji Branch, through its
authorized officer,
Off. At: Hotel Avanti Building,
Rua de Ourem, Panaji Goa.

... Respondents.

Mr. Shivraj Gaonkar, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Pravin Faldessai,
Additional Government Advocate for respondent no.1 to 3.

Mr. Omkar Kulkarni, Advocate for respondent no.4.

Mr. S.M. Singbal, Advocate for respondent no.5.

Mr. Pavithran A.V., Advocate for respondent no.6.

***Coram : PRADEEP NANDRAJOG, CJ., &
M. S. SONAK, J.***

Date : 7th October 2019.

ORAL JUDGMENT (Per Pradeep Nandrajog, CJ.)

Rule. Rule is made returnable forthwith.

2. The petitioners are/were employees of the fourth respondent and are armed with orders passed by the Labour Court under Section 33C(2) of the Industrial Disputes Act of 1947 pursuant where to the Labour Commissioner has issued a recovery certificate in sum of Rs.2,48,13,087/- in terms of two awards dated 06.10.2017 and 25.09.2018 in favour of the petitioners and against respondent no.4.

3. The Mamlatdar i.e. respondent no.3 proceeded to attach the property of the fourth respondent but was informed, as pleaded in the petition, that the Axis Bank has a lien on the assets being a secured creditor. The writ petition has been filed on the plea that as per Section 46 of the Goa, Daman & Diu Land Revenue Act, 1968 arrears of Land Revenue or a paramount charge on a holding and the plea is that as per law workman's dues have to be recovered in the same manner as arrears of land Revenue and thus the petitioner asserts that the dues of the workmen have to be treated as arrears of Land Revenue.

4. This is incorrect. If law mandates the procedure to be followed while effecting recovery, that does not mean that what is envisaged by the procedure becomes the substance. Thus, merely because the dues of the workmen have to be recovered in the manner prescribed for recovery of arrears of Land Revenue would not mean that the dues of the workmen become Land Revenue.

5. At the hearing today it transpires that respondent no.5 is not the secured asset holder. It is the Union Bank of India, impleaded as respondent no.6, which is the secured creditor.

6. The said bank has simply initiated proceedings under Section

13 of the SARFAESI Act, 2002 by attaching the property and taking possession thereof. Sale has not been issued. Reason is obvious. The learned counsel for the respondent no.3 states that public notice issued inviting offers to purchase the land, building and machinery of the fourth respondent remained unresponsive. No bid was received.

7. Thus, declining the relief prayed for in the petition i.e. holding that the dues of the workmen are not to be treated as Land Revenue arrears, we terminate proceedings leaving it to the petitioners to proceed either under the Bankruptcy Code or through their Union act in concert with respondent No.6 bank to see that maximum returns are obtained or proceed for civil arrest of the director of respondent no.4.

8. On the issue whether the workmen's dues would rank pari passu with the rights of respondent no.6, we make no declaration for the reason that, in the pleadings said issue does not arise for consideration.

9. There shall be no orders as to costs.

M. S. SONAK, J.

CHIEF JUSTICE